



Docket No. 6159

AFJ
JFW

THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

In re Application of

JAMES D. KROL

APPEAL No.

U.S. Serial No. 10/692,857

Group Art Unit 1761

Filed: October 27, 2003

Examiner: L. Tran

LOW CARBOHYDRATE FOOD PRODUCT AND METHOD OF MAKING THE SAME

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Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Transmitted herewith is the Appeal Brief in the above-identified application.

X Appeal Brief fee enclosed of \$250.00 / ~~\$500.00~~.
X Small entity status of this application has been established.

X This Appeal Brief is being filed within the period set for filing.

— Appellant(s) hereby petition for an extension for filing this Appeal Brief as follows:

— First-Month Extension.....	\$ 60.00 / \$ 120.00
— Second-Month Extension.....	\$ 225.00 / \$ 450.00
— Third-Month Extension.....	\$ 510.00 / \$ 1020.00
— Fourth-Month Extension.....	\$ 795.00 / \$ 1590.00

A check in the amount of \$ 250.00 is attached hereto.

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 02-3690 of the undersigned attorney. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

By

Theodore A. Breiner, Reg. No. 32,103
Attorney of Record

Date: January 8, 2007
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6159/jsl

"PATENT APPLICATION"

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

JAMES D. KROL

U.S. Serial No. 10/692,857

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L. Tran, Examiner

LOW CARBOHYDRATE FOOD PRODUCT
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Alexandria, Virginia
January 8, 2007

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

B R I E F O N A P P E A L

Dear Sir:

This appeal is from the action of the Primary Examiner mailed September 7, 2006 in rejecting claims 1-26.

Appellant's brief fee of \$250 is attached. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 02-3690 of the undersigned attorney.

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Real Party in Interest

The named inventor, James D. Krol, of the captioned application is the owner of the entire right, title and interest in the captioned application.

Related Appeals and Interferences

No appeal or interference is known to appellant which will directly affect or be directly affected by or have a bearing on the Board's decision in this pending appeal.

Status of Claims

The claims pending in this application are claims 1-26. Claims 1, 11, 16 and 22 are the independent claims. Claims 1-26 are rejected. Accordingly, the appealed claims are claims 1-26 as set forth in the Claims Appendix hereto.

Status of Amendments

No response was filed with regard to the September 7, 2006 official action. A Notice of Appeal was filed on November 7, 2006.

Summary of Claimed Subject Matter

Claim 1 claims a food product (page 3, lines 18-

19; page 7, lines 2-3) comprising:

a base layer being a formulated flour and a cheese mixture, (page 4, lines 11-13; page 7, lines 16-18) wherein said formulated flour is a dry mixture, (page 4, lines 12-13; page 7, lines 17-18) wherein said food product is lower in carbohydrates than a traditional pizza having a crust. (page 13, lines 13-15)

Claim 11 claims a crustless pizza (page 3, lines 20-21; page 7, lines 4-6) comprising:

a base layer being a formulated flour and a cheese mixture, (page 4, lines 11-13; page 7, lines 16-18) wherein said formulated flour is a dry mixture; (page 4, lines 12-13; page 7, lines 17-18) and

at least one food layer, (page 4, lines 13-14; page 8, line 12-page 9, line 2) wherein said crustless pizza is lower in carbohydrates than a non-crustless pizza. (page 13, lines 13-15)

Claim 16 claims a method of making a food product (page 3, lines 18-19; page 7, lines 2-3) comprising:

preparing a formulated flour, (page 7, line 19-page 8, line 7) wherein said formulated flour is a dry mixture comprising a high gluten flour and a baking powder; (page 7, lines 19-22)

distributing a pre-measured amount of said

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formulated flour evenly onto a cooking pan; (page 4, line 22-page 5, line 3; page 9, lines 9-11)

distributing a pre-measured amount of a cheese evenly over said formulated flour; (page 5, lines 3-4; page 8, lines 10-11; page 9, lines 11-13)

optionally adding and distributing evenly a pre-measured amount of at least one food layer over said cheese; (page 5, lines 4-12; page 9, lines 19-20) and

baking said food product for a suitable time and at a suitable temperature, (page 5, lines 13-14) wherein said food product is lower in carbohydrates than a traditional pizza having a crust. (page 13, lines 13-15)

Claim 22 claims a method of making a crustless pizza (page 3, line 20-page 4, line 1; page 7, lines 4-6) comprising:

preparing a formulated flour, (page 7, line 19-page 8, line 7) wherein said formulated flour is a dry mixture comprising a high gluten flour and a baking powder; (page 7, lines 19-22)

distributing a pre-measured amount of said formulated flour evenly onto a cooking pan; (page 4, line 22-page 5, line 3)

distributing a pre-measured amount of a cheese evenly over said formulated flour; (page 5, lines 3-4; page

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8, lines 10-11; page 9, lines 11-13)

distributing a pre-measured amount of a pizza sauce or a tomato sauce evenly over said cheese; (page 5, lines 9-12; page 10, lines 2-4)

adding and distributing evenly a pre-measured amount of at least one food layer over said pizza sauce or said tomato sauce; (page 9, lines 13-15) and

baking said crustless pizza for a suitable time and at a suitable temperature, (page 5, lines 13-14) wherein said crustless pizza is lower in carbohydrates than a non-crustless pizza. (page 13, lines 13-15)

Grounds of Rejection to be Reviewed on Appeal

The grounds of rejection of the present appeal are:

- A. Claims 1-26 under 35 U.S.C. § 103(a) over the recipe for "Crustless Pizza" in view of the disclosure by the Google Group on April 1, 2003 (Google Group disclosure).

Argument

The pending claims are claims 1-26, wherein claims 1, 11, 16 and 22 are the independent claims.

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I. Rejection Of Claims 1-26 Under 35 U.S.C.
§ 103(a) Over The "Crustless Pizza" Recipe
In View Of The Google Group Disclosure

Claims 1-26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the recipe for "Crustless Pizza" in view of the Google Group disclosure. Appellant respectfully appeals from the rejection and requests reversal of the rejection on the grounds that the claimed inventions are not rendered obvious by the "Crustless Pizza" recipe in view of the Google Group disclosure for the reasons set forth hereafter.

A rejection is proper under 35 U.S.C. § 103(a) only if the combination of prior art references relied upon by the Examiner would have rendered the claimed invention obvious to one skilled in the art at the time of the invention. A prima facie case of obviousness requires that the applied art, without knowledge of applicants' disclosure, disclose or suggest each and every limitation of the claimed invention. In re Vaeck, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991); In re Rovka, 180 USPQ 580, 583 (CCPA 1974). The motivation to modify the applied art must be found in the applied art itself or in the knowledge generally available to one skilled in the art, and not through hindsight using applicants' disclosure to mosaic the prior art. In re Fine, 5 USPQ2d 1596, 1599-1600 (Fed. Cir.

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1988).

The burden of establishing a prima facie case of obviousness requires a showing of some objective teaching in the prior art or from knowledge generally available to one of ordinary skill in the art that would lead the individual to the claimed invention. Ex parte Levengood, 28 USPQ2d 1300, 1302 (BPAI 1993). This Board in Levengood notes that an examiner cannot establish obviousness by locating a reference or references which describe an aspect of the patent applicant's invention without also providing evidence of the motivating force which would impel one skilled in the art to do what the patent applicant has done. It is well established that a rejection under § 103 must rest on a firm factual basis and that the examiner has the initial duty of providing that factual basis. Deficiencies in the factual basis cannot be supplied by resorting to speculation or unsupported generalities. In re Warner, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967), and In re Freed, 425 F.2d 785, 165 USPQ 570 (CCPA 1970).

Further, the mere fact that the prior art can be modified does not make the modification obvious unless the prior art suggests the desirability of the modification. In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125 (Fed. Cir. 1984). Thus, once applicant's solution to a problem is

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disclosed, it is easy to see how a prior art reference or references can be modified and manipulated to produce the claimed invention. The change can appear simple and by hindsight seem obvious. However, as stated by the Court in In re Sporck, 301 F.2d 686, 133 USPQ 360, 363 (CCPA 1962), the simplicity of new inventions is oftentimes the very thing that is not obvious before they are made.

In In re Dow Chemical, 837 F.2d 469, 5 USPQ2d 1529 (Fed. Cir. 1988), the Court, citing Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1985), stated that "... selective hindsight is no more applicable to the design of experiments than it is to the combination of prior art teachings." The Patent Office examiner had rejected claims to a particular polymer based upon a combination of references and the fact that one prior art reference taught a technique that could have been (but never was) used to produce the claimed polymer. The Board of Patent Appeals and Interferences asserted that unless the prior art is shown to have led one of ordinary skill to expect the prior art technique to fail, the applicant's burden of overcoming a prima facie case of obviousness is not met. The Federal Circuit rejected this standard and characterized the Patent Office standard as an improper "obvious to experiment" standard for obviousness. The Court

held that both "the suggestion and the expectation of success must be founded in the prior art, not in the applicant's disclosure"; and that there "must be a reason or suggestion in the art for selecting the procedure used, other than the knowledge learned from the applicant's disclosure...." (5 USPQ2d, at 1532). Obvious to try is not the standard of 35 U.S.C. § 103. In re Antonie, 559 F.2d 618, 195 USPQ 6, 8 (CCPA 1977).

Appellant's claimed invention is directed to a low carbohydrate food product and method of making the same. More particularly, appellant's invention is a low carbohydrate crustless pizza and a method of making the same, such that the low carbohydrate crustless pizza exhibits a texture, flavor, consistency and handleable character similar to a traditional pizza made with a high carbohydrate pizza dough crust.

In rejecting claims 1-26 under 35 U.S.C. § 103(a), the Examiner cites the "Crustless Pizza" recipe as the primary reference, but then discusses the "Deep Dish Pizza" recipe in the rejection. From the Examiner's comments, appellant understands and addresses the rejection as being directed to the "Deep Dish Pizza" recipe in view of the Google Group disclosure. The "Deep Dish Pizza" recipe discloses sprinkling Italian cheeses over the bottom of a

casserole dish and pouring an egg mixture over the cheese. The egg mixture includes eggs, cream cheese, cream, grated Parmesan cheese and spices such as oregano and garlic powder. As acknowledged by the Examiner on page 2 of the official action mailed January 18, 2006, the "Deep Dish Pizza" recipe does not disclose a base layer being a formulated flour and cheese mixture wherein the formulated flour is a dry mixture as claimed. In fact, the "Deep Dish Pizza" recipe teaches away from a dry mixture of formulated flour and cheeses by disclosing a liquid egg mixture being added to the cheese base layer. Also, the cheese base layer does not include formulated flour as claimed.

The Google Group disclosure does not make up for the shortcomings of the "Deep Dish Pizza" recipe as set forth above. The Examiner states that, according to the Google Group disclosure, it "is known in the art to make low carbohydrate pizza by making low carbohydrate crust using little flour and whey protein." The Google Group disclosure provides that "[t]here are recipes for low carb crusts that use a little flour and some whey protein in a cook book I bought, but I haven't tried them, so I hesitate to recommend them right now." The Google Group disclosure does not disclose or suggest a base layer being a formulated flour and cheese mixture wherein the formulated flour is a dry

mixture as claimed. Additionally, the Google Group disclosure does not disclose or suggest a food product or pizza without a crust.

A. Rejection Of Claim 1 Under 35 U.S.C. § 103(a)

Claim 1 claims a food product comprising a base layer being a formulated flour and a cheese mixture, wherein the formulated flour is a dry mixture. The food product is further claimed as being lower in carbohydrates than a traditional pizza having a crust. Accordingly, the "Deep Dish Pizza" recipe in view of the Google Group disclosure does not disclose or suggest a base layer being a formulated flour and cheese mixture wherein the formulated flour is a dry mixture. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render obvious the invention of claim 1. Accordingly, appellant respectfully requests reversal of the rejection of claim 1 based on the "Deep Dish Pizza" recipe in combination with the Google Group disclosure under 35 U.S.C. § 103(a).

For the reasons, among others, set forth above for claim 1, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of dependent claims 2-10. Accordingly, appellant respectfully requests reversal of the rejection of these claims.

B. Rejection Of Claim 2 Under 35 U.S.C. § 103(a)

For the reasons, among others, set forth above for claim 1, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 2. Additionally, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 2, namely, the food product of claim 1 wherein the formulated flour comprises a high gluten flour and a double acting baking powder. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render obvious the invention of claim 2. Accordingly, appellant respectfully requests reversal of the rejection of claim 2.

C. Rejection Of Claim 3 Under 35 U.S.C. § 103(a)

For the reasons, among others, set forth above for claim 1, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 3. Additionally, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 3, namely, the food product of claim 2 wherein a batch of the formulated flour comprises 6 cups of the high gluten flour and 2 tablespoons of the double acting

baking powder, mixed thoroughly, wherein the low carbohydrate food product comprises approximately one teaspoon of the batch of said formulated flour. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render obvious the invention of claim 3. Accordingly, appellant respectfully requests reversal of the rejection of claim 3.

D. Rejection Of Claim 4 Under 35 U.S.C. § 103(a)

For the reasons, among others, set forth above for claim 1, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 4. Additionally, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 4, namely, the food product of claim 1 wherein the base layer further comprises at least one additional food product. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render obvious the invention of claim 4. Accordingly, appellant respectfully requests reversal of the rejection of claim 4.

E. Rejection Of Claim 5 Under 35 U.S.C. § 103(a)

For the reasons, among others, set forth above for claim 1, the "Deep Dish Pizza" recipe in combination with

the Google Group disclosure does not disclose or suggest each and every element of claim 5. Additionally, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 5, namely, the food product of claim 4 wherein the at least one additional food product is selected from the group consisting of meat toppings, poultry toppings, fish toppings, soy enriched meat toppings, vegetables, fruits and any combination thereof. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render obvious the invention of claim 5. Accordingly, appellant respectfully requests reversal of the rejection of claim 5.

F. Rejection Of Claim 6 Under 35 U.S.C. § 103(a)

For the reasons, among others, set forth above for claim 1, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 6. Additionally, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 6, namely, the food product of claim 1 further comprising at least one food layer, wherein the at least one food layer is selected from the group consisting of cheeses, tomato sauce, meat toppings, poultry toppings,

fish toppings, soy enriched meat toppings, vegetables, fruits and any combination thereof. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render obvious the invention of claim 6. Accordingly, appellant respectfully requests reversal of the rejection of claim 6.

G. Rejection Of Claim 7 Under 35 U.S.C. § 103(a)

For the reasons, among others, set forth above for claim 1, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 7. Additionally, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 7, namely, the food product of claim 2 wherein the base layer further comprises at least one additional food product. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render obvious the invention of claim 7. Accordingly, appellant respectfully requests reversal of the rejection of claim 7.

H. Rejection Of Claim 8 Under 35 U.S.C. § 103(a)

For the reasons, among others, set forth above for claim 1, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest

each and every element of claim 8. Additionally, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 8, namely, the food product of claim 7 wherein the at least one additional food product is selected from the group consisting of meat toppings, poultry toppings, fish toppings, soy enriched meat toppings, vegetables, fruits and any combination thereof. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render obvious the invention of claim 8. Accordingly, appellant respectfully requests reversal of the rejection of claim 8.

I. Rejection Of Claim 9 Under 35 U.S.C. § 103(a)

For the reasons, among others, set forth above for claim 1, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 9. Additionally, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 9, namely, the food product of claim 2 further comprising at least one food layer, wherein the at least one food layer is selected from the group consisting of cheeses, tomato sauce, meat toppings, poultry toppings, fish toppings, soy enriched meat toppings, vegetables,

fruits and any combination thereof. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render obvious the invention of claim 9. Accordingly, appellant respectfully requests reversal of the rejection of claim 9.

J. Rejection Of Claim 10 Under 35 U.S.C. § 103(a)

For the reasons, among others, set forth above for claim 1, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 10. Additionally, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 10, namely, the food product of claim 3 further comprising at least one food layer, wherein the at least one food layer is selected from the group consisting of cheeses, tomato sauce, meat toppings, poultry toppings, fish toppings, soy enriched meat toppings, vegetables, fruits and any combination thereof. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render obvious the invention of claim 10. Accordingly, appellant respectfully requests reversal of the rejection of claim 10.

K. Rejection Of Claim 11 Under 35 U.S.C. § 103(a)

Claim 11 claims a crustless pizza comprising a

base layer being a formulated flour and a cheese mixture, wherein the formulated flour is a dry mixture, and at least one food layer, wherein the crustless pizza is lower in carbohydrates than a non-crustless pizza. Accordingly, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest a base layer being a formulated flour and cheese mixture, wherein the formulated flour is a dry mixture. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render obvious the invention of claim 11. Accordingly, appellant respectfully requests reversal of the rejection of claim 11 based on the "Deep Dish Pizza" recipe in combination with the Google Group disclosure under 35 U.S.C. § 103(a).

For the reasons, among others, set forth above for claim 11, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of dependent claims 12-15. Accordingly, appellant respectfully requests reversal of the rejection of these claims.

L. Rejection Of Claim 12 Under 35 U.S.C. § 103(a)

For the reasons, among others, set forth above for claim 11, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest

each and every element of claim 12. Additionally, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 12, namely, the crustless pizza of claim 11 wherein the formulated flour comprises a high gluten flour and a double acting baking powder. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render obvious the invention of claim 12. Accordingly, appellant respectfully requests reversal of the rejection of claim 12.

M. Rejection Of Claim 13 Under 35 U.S.C. § 103(a)

For the reasons, among others, set forth above for claim 11, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 13. Additionally, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 13, namely, the crustless pizza of claim 12 wherein a batch of the formulated flour comprises 6 cups of the high gluten flour and 2 tablespoons of the double acting baking powder, wherein the low carbohydrate crustless pizza comprises approximately one teaspoon of the batch of the formulated flour. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render

obvious the invention of claim 13. Accordingly, appellant respectfully requests reversal of the rejection of claim 13.

N. Rejection Of Claim 14 Under 35 U.S.C. § 103(a)

For the reasons, among others, set forth above for claim 11, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 14. Additionally, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 14, namely, the crustless pizza of claim 11 wherein the base layer further comprises at least one additional food product selected from the group consisting of meat toppings, poultry toppings, fish toppings, soy enriched meat toppings, vegetables, fruits and any combination thereof. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render obvious the invention of claim 14. Accordingly, appellant respectfully requests reversal of the rejection of claim 14.

O. Rejection Of Claim 15 Under 35 U.S.C. § 103(a)

For the reasons, among others, set forth above for claim 11, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 15. Additionally, the "Deep

Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 15, namely, the crustless pizza of claim 11 wherein the at least one food layer is selected from the group consisting of cheeses, tomato sauce, meat toppings, poultry toppings, fish toppings, soy enriched meat toppings, vegetables, fruits and any combination thereof. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render obvious the invention of claim 15. Accordingly, appellant respectfully requests reversal of the rejection of claim 15.

P. Rejection Of Claim 16 Under 35 U.S.C. § 103(a)

Claim 16 claims a method of making a food product comprising preparing a formulated flour, wherein the formulated flour is a dry mixture comprising a high gluten flour and a baking powder, distributing a pre-measured amount of the formulated flour evenly onto a cooking pan, distributing a pre-measured amount of a cheese evenly over the formulated flour, optionally adding and distributing evenly a pre-measured amount of at least one food layer over the cheese, and baking the food product for a suitable time and at a suitable temperature, wherein the food product is lower in carbohydrates than a traditional pizza having a crust. Accordingly, the "Deep Dish Pizza" recipe in

combination with the Google Group disclosure does not disclose or suggest a formulated flour and cheese mixture wherein the formulated flour is a dry mixture comprising a high gluten flour and baking powder. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render obvious the invention of claim 16. Accordingly, appellant respectfully requests reversal of the rejection of claim 16 based on the "Deep Dish Pizza" recipe in combination with the Google Group disclosure under 35 U.S.C. § 103(a).

For the reasons, among others, set forth above for claim 16, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of dependent claims 17-21. Accordingly, appellant respectfully requests reversal of the rejection of these claims.

Q. Rejection Of Claim 17 Under 35 U.S.C. § 103(a)

For the reasons, among others, set forth above for claim 16, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 17. Additionally, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 17, namely, the method of making a food

product of claim 16 wherein the food product is baked in a pizza oven or a conventional oven from about 9 minutes to about 13 minutes at about 450°F to about 525°F. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render obvious the invention of claim 17. Accordingly, appellant respectfully requests reversal of the rejection of claim 17.

R. Rejection Of Claim 18 Under 35 U.S.C. § 103(a)

For the reasons, among others, set forth above for claim 16, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 18. Additionally, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 18, namely, the method of making a food product of claim 16, the method further comprising cooling the food product to where an internal temperature of the food product is approximately 140°F, slicing the food product into desired portions, and optionally packaging the food product. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render obvious the invention of claim 18. Accordingly, appellant respectfully requests reversal of the rejection of claim 18.

S. Rejection Of Claim 19 Under 35 U.S.C. § 103(a)

For the reasons, among others, set forth above for claim 16, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 19. Additionally, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 19, namely, the method of making a food product of claim 16 wherein the at least one food layer is selected from the group consisting of cheeses, tomato sauce, meat toppings, poultry toppings, fish toppings, soy enriched meat toppings, vegetables, fruits and any combination thereof. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render obvious the invention of claim 19. Accordingly, appellant respectfully requests reversal of the rejection of claim 19.

T. Rejection Of Claim 20 Under 35 U.S.C. § 103(a)

For the reasons, among others, set forth above for claim 16, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 20. Additionally, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 20, namely, the method of making a food

product of claim 16, the method further comprising freezing the food product, thawing the food product at some time after freezing, and reheating the food product at a low temperature in a suitable heating apparatus. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render obvious the invention of claim 20. Accordingly, appellant respectfully requests reversal of the rejection of claim 20.

U. Rejection Of Claim 21 Under 35 U.S.C. § 103(a)

For the reasons, among others, set forth above for claim 16, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 21. Additionally, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 21, namely, the method of making a food product of claim 20 wherein the suitable heating apparatus is selected from the group consisting of microwave oven, pizza oven, conventional gas oven, and conventional electric oven. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render obvious the invention of claim 21. Accordingly, appellant respectfully requests reversal of the rejection of claim 21.

V. Rejection Of Claim 22 Under 35 U.S.C. § 103(a)

Claim 22 claims a method of making a crustless pizza comprising preparing a formulated flour, wherein the formulated flour is a dry mixture comprising a high gluten flour and a baking powder, distributing a pre-measured amount of the formulated flour evenly onto a cooking pan, distributing a pre-measured amount of a cheese evenly over the formulated flour, distributing a pre-measured amount of a pizza sauce or a tomato sauce evenly over the cheese, adding and distributing evenly a pre-measured amount of at least one food layer over the pizza sauce or the tomato sauce, and baking the crustless pizza for a suitable time and at a suitable temperature, wherein the crustless pizza is lower in carbohydrates than a non-crustless pizza. Accordingly, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest a formulated flour and cheese mixture wherein the formulated flour is a dry mixture comprising a high gluten flour and baking powder. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render obvious the invention of claim 22. Accordingly, appellant respectfully requests reversal of the rejection of claim 22 based on the "Deep Dish Pizza" recipe in combination with the Google Group disclosure under 35 U.S.C.

§ 103(a).

For the reasons, among others, set forth above for claim 22, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of dependent claims 23-26. Accordingly, appellant respectfully requests reversal of the rejection of these claims.

W. Rejection Of Claim 23 Under 35 U.S.C. § 103(a)

For the reasons, among others, set forth above for claim 22, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 23. Additionally, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 23, namely, the method of making a crustless pizza of claim 22 wherein the crustless pizza is baked in a pizza oven or a conventional oven from about 9 minutes to about 13 minutes at about 450°F to about 525°F. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render obvious the invention of claim 23. Accordingly, appellant respectfully requests reversal of the rejection of claim 23.

X. Rejection Of Claim 24 Under 35 U.S.C. § 103(a)

For the reasons, among others, set forth above for

claim 22, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 24. Additionally, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 24, namely, the method of making a crustless pizza of claim 22, the method further comprising cooling the crustless pizza, slicing the crustless pizza into desired portions, and optionally packaging the crustless pizza. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render obvious the invention of claim 24. Accordingly, appellant respectfully requests reversal of the rejection of claim 24.

Y. Rejection Of Claim 25 Under 35 U.S.C. § 103(a)

For the reasons, among others, set forth above for claim 22, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 25. Additionally, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 25, namely, the method of making a crustless pizza of claim 22 wherein the at least one food layer is selected from the group consisting of cheeses, tomato sauce, meat toppings, poultry toppings, fish

toppings, soy enriched meat toppings, vegetables, fruits and any combination thereof. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render obvious the invention of claim 25. Accordingly, appellant respectfully requests reversal of the rejection of claim 25.

Z. Rejection Of Claim 26 Under 35 U.S.C. § 103(a)

For the reasons, among others, set forth above for claim 22, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 26. Additionally, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not disclose or suggest each and every element of claim 26, namely, the method of making a crustless pizza of claim 22, the method further comprising freezing the crustless pizza, thawing the crustless pizza at some time after freezing, and reheating the crustless pizza at a low temperature in a suitable heating apparatus. As such, the "Deep Dish Pizza" recipe in combination with the Google Group disclosure does not render obvious the invention of claim 26. Accordingly, appellant respectfully requests reversal of the rejection of claim 26.

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Conclusion

Based on the above, appellant respectfully submits that claims 1-26 would not have been obvious to one skilled in the art based on the "Deep Dish Pizza" recipe in combination with the Google Group disclosure. It is respectfully submitted that the appealed claims are patentable within the meaning of 35 U.S.C. § 103. Reversal of the examiner's rejections is, therefore, respectfully urged. Allowance of the claims is respectfully requested.

Respectfully submitted,

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Attachments - Claims Appendix
- Evidence Appendix
- Related Proceedings Appendix



The Appealed Claims

1. A food product comprising:

a base layer being a formulated flour and a cheese mixture, wherein said formulated flour is a dry mixture, wherein said food product is lower in carbohydrates than a traditional pizza having a crust.

2. The food product according to claim 1, wherein said formulated flour comprises a high gluten flour and a double acting baking powder.

3. The food product according to claim 2 wherein a batch of said formulated flour comprises 6 cups of said high gluten flour and 2 tablespoons of said double acting baking powder, mixed thoroughly, wherein said low carbohydrate food product comprises approximately one teaspoon of said batch of said formulated flour.

4. The food product according to claim 1 wherein said base layer further comprises at least one additional food product.

5. The food product according to claim 4 wherein said at least one additional food product is selected from the group consisting of meat toppings, poultry toppings, fish toppings, soy enriched meat toppings, vegetables, fruits and

any combination thereof.

6. The food product according to claim 1 further comprising:

at least one food layer, wherein said at least one food layer is selected from the group consisting of cheeses, tomato sauce, meat toppings, poultry toppings, fish toppings, soy enriched meat toppings, vegetables, fruits and any combination thereof.

7. The food product according to claim 2 wherein said base layer further comprises at least one additional food product.

8. The food product according to claim 7 wherein said at least one additional food product is selected from the group consisting of meat toppings, poultry toppings, fish toppings, soy enriched meat toppings, vegetables, fruits and any combination thereof.

9. The food product according to claim 2 further comprising:

at least one food layer, wherein said at least one food layer is selected from the group consisting of cheeses, tomato sauce, meat toppings, poultry toppings, fish toppings, soy enriched meat toppings, vegetables, fruits and any combination thereof.

10. The food product according to claim 3 further comprising:

at least one food layer, wherein said at least one food layer is selected from the group consisting of cheeses, tomato sauce, meat toppings, poultry toppings, fish toppings, soy enriched meat toppings, vegetables, fruits and any combination thereof.

11. A crustless pizza comprising:

a base layer being a formulated flour and a cheese mixture, wherein said formulated flour is a dry mixture; and

at least one food layer, wherein said crustless pizza is lower in carbohydrates than a non-crustless pizza.

12. The crustless pizza according to claim 11 wherein said formulated flour comprises a high gluten flour and a double acting baking powder.

13. The crustless pizza according to claim 12 wherein a batch of said formulated flour comprises 6 cups of said high gluten flour and 2 tablespoons of said double acting baking powder, wherein said low carbohydrate crustless pizza comprises approximately one teaspoon of said batch of said formulated flour.

14. The crustless pizza according to claim 11 wherein said base layer further comprises at least one additional

food product selected from the group consisting of meat toppings, poultry toppings, fish toppings, soy enriched meat toppings, vegetables, fruits and any combination thereof.

15. The crustless pizza of claim 11 wherein said at least one food layer is selected from the group consisting of cheeses, tomato sauce, meat toppings, poultry toppings, fish toppings, soy enriched meat toppings, vegetables, fruits and any combination thereof.

16. A method of making a food product comprising:

preparing a formulated flour, wherein said formulated flour is a dry mixture comprising a high gluten flour and a baking powder;

distributing a pre-measured amount of said formulated flour evenly onto a cooking pan;

distributing a pre-measured amount of a cheese evenly over said formulated flour;

optionally adding and distributing evenly a pre-measured amount of at least one food layer over said cheese; and

baking said food product for a suitable time and at a suitable temperature, wherein said food product is lower in carbohydrates than a traditional pizza having a crust.

17. The method of making a food product according to claim 16 wherein said food product is baked in a pizza oven or a conventional oven from about 9 minutes to about 13 minutes at about 450°F to about 525°F.

18. The method of making a food product according to claim 16, said method further comprising:

cooling said food product to where an internal temperature of said food product is approximately 140°F;
slicing said food product into desired portions;
and

optionally packaging said food product.

19. The method of making a food product according to claim 16 wherein said at least one food layer is selected from the group consisting of cheeses, tomato sauce, meat toppings, poultry toppings, fish toppings, soy enriched meat toppings, vegetables, fruits and any combination thereof.

20. The method of making a food product according to claim 16, said method further comprising:

freezing said food product;
thawing said food product at some time after freezing; and
reheating said food product at a low temperature in a suitable heating apparatus.

21. The method of making a food product according to claim 20 wherein said suitable heating apparatus is selected from the group consisting of microwave oven, pizza oven, conventional gas oven, and conventional electric oven.

22. A method of making a crustless pizza comprising:
preparing a formulated flour, wherein said formulated flour is a dry mixture comprising a high gluten flour and a baking powder;

distributing a pre-measured amount of said formulated flour evenly onto a cooking pan;

distributing a pre-measured amount of a cheese evenly over said formulated flour;

distributing a pre-measured amount of a pizza sauce or a tomato sauce evenly over said cheese;

adding and distributing evenly a pre-measured amount of at least one food layer over said pizza sauce or said tomato sauce; and

baking said crustless pizza for a suitable time and at a suitable temperature, wherein said crustless pizza is lower in carbohydrates than a non-crustless pizza.

23. The method of making a crustless pizza according to claim 22 wherein said crustless pizza is baked in a pizza oven or a conventional oven from about 9 minutes to about 13

minutes at about 450°F to about 525°F.

24. The method of making a crustless pizza according to claim 22, said method further comprising:

cooling said crustless pizza;

slicing said crustless pizza into desired portions; and

optionally packaging said crustless pizza.

25. The method of making a crustless pizza according to claim 22 wherein said at least one food layer is selected from the group consisting of cheeses, tomato sauce, meat toppings, poultry toppings, fish toppings, soy enriched meat toppings, vegetables, fruits and any combination thereof.

26. The method of making a crustless pizza according to claim 22, said method further comprising:

freezing said crustless pizza;

thawing said crustless pizza at some time after freezing; and

reheating said crustless pizza at a low temperature in a suitable heating apparatus.

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E V I D E N C E
A P P E N D I X

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None.

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R E L A T E D
P R O C E E D I N G S
A P P E N D I X

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None.

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